

Comparing Tennessee's Ethical Rules for Judges, Lawyers and Mediators

Part 1: Pre-and Post-Session Ethics—Who Knew?
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Comparing Tennessee's Ethical Rules for Mediators, Lawyers, and Judges

Part I: Pre- and Post-Session Ethics – Who Knew?

Scenario One

- Mediation results in settlement.
- *Parties agree on EE's average weekly wage, but agreement based on incorrect information.
- *EE's attorney does not rectify the mistake.
- Settlement approved in court.

Scenario One (cont.)

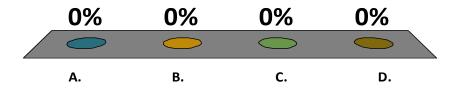
- *ER's attorney learns of the mistake made in calculating EE's average weekly wage and seeks to set the settlement aside.
- *ER's attorney obtains an affidavit from the mediator regarding the wage issue.
- Matter set for hearing before the approving judge.

Scenario One (cont.)

- During hearing, it is revealed that EE's attorney knew of ER's attorney's mistake but did not correct mistake.
- Settlement is set aside, and case ultimately goes to trial before same judge that approved the settlement and subsequently set it aside.
- *EE awarded significantly less at trial than he would have received pursuant to the settlement.

Is Employee's attorney in violation of any ethical rules?

- A. YES the rule of candor toward a tribunal
- B. YES the rule against engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation
- c. YES both A and B
- D. No



Rules of Professional Conduct: RULE 3.3: CANDOR TOWARD THE TRIBUNAL

Rules of Professional Conduct:
RULE 8.4: MISCONDUCT

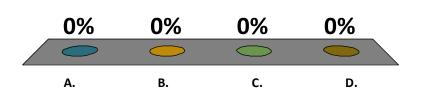
See Also: Rule 31: Section 3.

Responsibilities to Courts

Is Employer's attorney in violation of any ethical rules?

- A. YES the rule of competence
- B. YES Employer's attorney should have reported Employee's attorney to the appropriate authority based on his violation of the Rules of Professional Conduct and failed to do so
- C. YES both A and B





Rules of Professional Conduct: Rule 1.1: Competence

Rules of Professional Conduct: Rule 8.3: Reporting Professional Misconduct

See Also: Judicial Code of Conduct

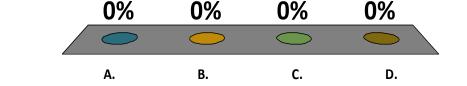
Rule 2.5 Competence, Diligence,

and Cooperation

Rule 31: Section 2.
General Standards and Qualifications

Is the judge in violation of any ethical rules?

- A. YES the judge should have disqualified himself as his impartiality could be called into question based on prejudice directed toward the Employee's attorney
- B. YES the judge should have reported Employee's attorney to the appropriate authority based on his violation of the Rules of Professional Conduct and failed to do so
- c. YES both A and B



D. NO

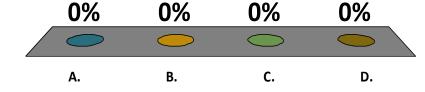
Judicial Code of Conduct: Rule 2.3 Bias, Prejudice, and Harassment

Judicial Code of Conduct:Rule 2.11 Disqualification

 Judicial Code of Conduct:
 Rule 2.15 Responding to Judicial and Lawyer Misconduct

Is the mediator in violation of any ethical rules?

- A. YES the judge should have disqualified himself as his impartiality could be called into question based on prejudice directed toward the Employee's attorney
- B. YES the judge should have reported Employee's attorney to the appropriate authority based on his violation of the Rules of Professional Conduct and failed to do so
- c. YES both A and B



D. NO

- *Rule 31:
 Section 7. Confidentiality
- Rule 31:
 Section 6. Impartiality

See also: Rules of Professional Conduct:

RULE 1.6: CONFIDENTIALITY

OF INFORMATION

Judicial Code of Conduct: RULE 2.2 Impartiality and Fairness

Scenario Two

- ◆EE injured at work in May 2009.
- EE reaches maximum medical improvement in June 2010.
- ❖Parties attend a mediation in December 2010.
- Mediation ends in an impasse, and a lawsuit is filed.

Scenario Two (cont.)

- Once case is ready for trial, parties attempt to obtain trial date.
- Judge's practice is to send all workers' compensation cases back to mediation before trial date can be set.
- *Parties hire a mediator and prepare for and attend another mediation.

Scenario Two (cont.)

- Second mediation ends in an impasse.
- By the time of trial, over three years have elapsed since the date of EE's injury.

By requiring mediation in all workers' compensation cases regardless of whether the parties have already been through mediation....

Is the Judge violating the ethical rule requiring the prompt and efficient disposition of cases?

A. YES

B. NO



Door Prize!!

8th Fastest Responder with the Correct Answer Wins

Two Tram & VIP Wristband Vouchers (Valued at \$100.00)

Donated By:



Medical Case managers are allowed to engage in claims adjusting activities?

A. Yes





Fastest Responders

| Seconds | Participant |
|---------|-------------|
| | |
| 2.4 | 14 |
| 2.503 | 8 |
| 2.517 | 11 |
| 2.779 | 12 |
| 2.984 | 22 |
| 2.987 | 30 |
| 3.098 | 19 |
| 3.118 | 23 |
| 3.133 | 24 |

Judicial Code of Conduct: Rule 2.5 Competence, Diligence, and Cooperation

See also: Rules of Professional Conduct: RULE 1.3: DILIGENCE

Rule 31:

Section 4. The Dispute Resolution Process

Does the Judge's practice run afoul of his responsibility to hear and decide matters assigned to him?

A. YES

B. NO



Judicial Code of Conduct: Rule 2.7 Responsibility to Decide

Could the practice violate the Judge's responsibility to ensure the parties' right to be heard?

A. YES

B. NO



Judicial Code of Conduct: Rule 2.6 Ensuring the Right to Be Heard

Scenario Three

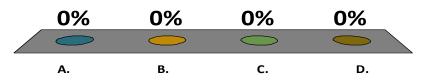
- *RFA filed by EE seeking medical benefits and temporary disability benefits.
- *Carrier retains an attorney to represent it and its insured.
- ❖ EE injured in TN but performs work in TN, AR, and MS.
- The insured is principally located in AR.

Scenario Three (cont.)

- A coverage question arises.
- Insured provides a certificate of insurance which shows that it is covered in TN, AR, and MS.
- Carrier provides a certificate of insurance which shows that the insured is only covered in AR and MS.
- *It appears that the certificate of insurance provided by the insured has been altered.

Under the Rules of Professional Conduct, is the attorney required to withdraw from representation of either of his clients?

- A. YES based on a conflict of interest
- B. YES based on the insured's seemingly fraudulent conduct
- c. YES both A and B
- D. NO



Rules of Professional Conduct: RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

Rules of Professional Conduct:
RULE 1.16: DECLINING OR
TERMINATING REPRESENTATION

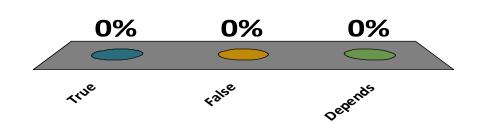
See also: Rule 31: Section 6. Impartiality

Scenario Three (cont.)

- *Attorney withdraws from representing the insured, but continues to represent carrier for purposes of the RFA.
- Attorney argues that carrier is not responsible for paying benefits on the claim because the policy does not cover TN claims.
- In defending carrier, Attorney admits that the certificate of insurance provided by the insured has been altered.

It is appropriate for the attorney to continue to represent the insurance company after withdrawing from representing the insured...

- A. True
- **B.** False
- c. Depends



Rules of Professional Conduct: RULE 1.9: DUTIES TO FORMER CLIENTS

Would the attorney's admission that the certificate of insurance was altered violate the duties he owes to his former client?

A. YES

B. NO



Scenario Four

- Mediation set before a mediator in a workers' compensation case.
- In preparing for mediation, mediator discovers that the owner of ER is a former co-worker of the mediator.
- Mediator intends to advise parties of his personal relationship with ER's owner but gets busy with other mediations.
- * Parties not informed about relationship until the day of mediation.

EE has reservations, but parties ultimately agree to move forward with mediation despite the late disclosure.....

Have the mediator's actions violated his duty to avoid delays in the dispute resolution process?

A. YES



Rule 31: Section 4. The Dispute Resolution Process

Has the mediator violated the rule of disclosing conflicts of interest or relationships in this scenario?

A. YES



Rule 31: Section 6. Impartiality

Has the mediator violated an ethical rule by failing to withdraw from the mediation?

A. YES



Scenario Five

- *Attorney retained by EE in a workers' compensation case.
- Prior to the attorney being retained, carrier offered EE \$10,000.00 to settle claim with open future medical benefits.
- At mediation, claim is settled for \$20,000.00 with open future medical benefits.

Scenario Five (cont.)

Other than preparing for and attending mediation, EE's attorney has not performed any additional work on claim.

Is it ethical for Employee's attorney to seek a fee of 20% of the entire settlement amount?

A. YES



Rules of Professional Conduct: RULE 1.5: FEES

See also: Rule 31:

Section 9. Fees and Expenses

Scenario Six

- Assume carrier offered EE \$10,000.00 to settle the permanent partial disability claim and an additional payment of \$5,000.00 to close future medical benefits prior to the EE's attorney being retained.
- Assume further that case settled at mediation for \$20,000.00 plus \$5,000.00 to close future medicals.

Is it ethical for Employee's attorney to seek a fee from the amount paid to close future medical benefits?

A. YES

